

Issue: Religious Ownership/Use

1. The Department's position in this matter, namely that Cook County permanent parcel index number 13-01-305-001 should not be exempt from property tax for the 1992 assessment year was established by admission into evidence of Dept. Ex. Nos. 1-6.

2. The property in question is owned by Brian Construction Company.
(Post Hearing Ex. No. 1; Tr. pp. 29-30)

3. Brian Construction Company executed an Industrial Building Lease on April 9, 1991 with the Applicant on a month to month basis for monthly rent of \$2,575 plus 1/12 of the tax insurance and deposit. (Dept. Ex. No. 2)

4. The month to month lease, rather than a yearly lease, was necessary because the Applicant had become delinquent in the rental payments. (Tr. p. 21)

5. At the end of December, 1992, the Applicant was delinquent on rent in the amount of \$16,332.52. (Tr. p. 19)

6. The Applicant used the building at 2965 West Peterson Avenue in Chicago as a religious school for educating Jewish students at both the high school and college level. The programs combine both religious and secular studies. (Dept. Ex. No. 2; Tr. p. 32)

7. Brisk Academy Home of Yeshuran was incorporated on September 16, 1974 under the General Not For Profit Corporation Act of the State of Illinois. (Dept. Ex. No. 2)

8. On September 9, 1974, the name was changed to Brisk Rabbinical College, the purposes of which are:

To foster the knowledge and spread of Judaism, to educate young men to be educated laymen, to train and ordain rabbis, and teachers; to operate a high school wherein are taught both Jewish studies and a full secular program, to publish books and articles of general Jewish interest, and for such other purposes as are incident to the above. (Dept. Ex. No. 2)

9. The Applicant is exempt from payment of federal taxes pursuant to a 501(c)(3) designation by the Internal Revenue Service granted December 11, 1974. (Dept. Ex. No. 2)

CONCLUSIONS OF LAW: Article IX, 6 of the Illinois Constitution of

1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The Statutes of Illinois exempt certain property from taxation. In particular, 35 ILCS 19.2 (State Bar Edition) exempts in part as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, including all such property owned by churches or religious institutions.....

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. *People ex. rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1941). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967).

The Second District in *American National Bank and Trust Co. v. Department of Revenue*, 242 Ill.App.3d 716 (1993), held that property leased by a religious organization (Zion) from a private, for-profit party (Jack Kristof) and used for religious purposes is not exempt under Section 19.2. Section 19.2 does not mention the ownership of property as a requirement for exempt status, however the property must not be "leased or otherwise used with a view to profit". In *American National* the owner leased the land, building, parsonage, and parking lot to Zion for a profit. The court found that even though Zion intended to purchase the property, was liable for taxes and used the property for religious purposes, the owner of the

property used the property for a profit. 242 Ill.App.3d 716, 724. The First District Appellate Court upheld the reasoning of this case in Victory Christian Church et al. v. Department of Revenue, 264 Ill.App.3d 919 (First District, 1994).

Where property is leased with a view to profit, it is immaterial whether the income derived is used for religious purposes and irrelevant whether the lease actually generates a profit or loss, or if revenues are totally offset by operational maintenance costs. Village of Oak Park v. Rosewell, 115 Ill.App.3d 497 (1st District 1983).

The statutory language of 35 ILCS 205/19.2 is very clear. All property used exclusively for religious purposes and not leased or otherwise used with a view to profit is exempt. The property at issue is owned by Brian Construction Company and is leased by Brisk Rabbinical College pursuant to an Industrial Building Lease. Just because the Brisk Rabbinical College was not able to make the lease payments as agreed to between the parties does not negate the fact that the property leased for profit.

I therefore find that the property was leased by Brian Construction Company to Brisk Rabbinical College with a view to profit. I therefore recommend that Cook County parcel index number 13-01-305-001 remain on the tax rolls and be assessed to the Applicant.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge

June 6, 1995